

J. K. C. (4)
8-26-02
ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OHIO CASUALTY GROUP, as
Subrogee of ERIC STAUB,

Plaintiff,

v.

J & J INVESTMENT MANAGEMENT
COMPANY,

Defendant.

CIVIL ACTION NO.: CV01-0785
JURY TRIAL DEMANDED

J. K. C. FILED
HARRISBURG, PA

AUG 28 2002

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

Defendant, J & J Investment Management Company, respectfully submits the within Pre-Trial Memorandum.

A. BASIS OF FEDERAL COURT JURISDICTION

This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332.

B. SUMMARY OF FACTS

Plaintiffs have commenced this subrogation action, alleging that Defendant, J & J Investment Management Company, was negligent in the maintenance and management of a property located at 213 N. Broad Street, York, Pennsylvania, which was owned by J & J Investment Management.

A fire occurred on May 26, 2002 at a time when the premises was vacant. J & J Investment Management Company retained the services of Richard Edward Wonders and Al Budrow to perform work and repairs at the premises. These individuals were also instructed to secure the premises while work was being performed.

On May 26, 2002, minors unlawfully entered the premises and set fire to the building, causing extensive damage. The fire spread to adjoining premises owned by Eric Staub. Mr. Staub submitted a first-party property insurance claim to his insurance carrier, Plaintiff Ohio Casualty Group, which is prosecuting this subrogation action.

C. UNDISPUTED FACTS

1. That a fire occurred on May 26, 2000 at 213 N. Broad Street, York, Pennsylvania.
2. That the fire was incendiary in nature having been set by minors who unlawfully entered the premises.

D. DAMAGES

Given that this is a subrogation action, Plaintiff is entitled only to the actual cash value of the loss (replacement cost less depreciation) or the fair market value of the property, whichever is less.

E. WITNESSES

1. Richard Wonders
2. Al Budrow
3. John Giambalvo
4. Troy Cromer
5. Paul Zedonis - Expert in area of damages and fact witness
6. Thomas E. Minnich - Expert in the area of fire cause and origin investigation

F. EXPERT WITNESSES

1. Paul Zedonis - Expert in area of damages and fact witness
2. Thomas E. Minnich - Expert in the area of fire cause and origin investigation

G. SPECIAL COMMENT

None.

H. UNUSUAL LEGAL ISSUES

None.

I. STIPULATIONS

None at this time.

J. NUMBER OF TRIAL DAYS

Two, exclusive of jury selection.

K. OTHER MATTERS PERTINENT TO THIS CASE

Two actions involving similar facts, and the same parties, were filed in the Court of Common Pleas of York County. They are pending at this time.

L. EXHIBITS

1. Report of Thomas Minnich dated June 13, 2000
2. Photographs taken by Thomas Minnich
3. Recorded Statement of Richard Wonders
4. Deposition transcript of Richard Wonders
5. Deposition transcript of Al Budrow
6. Reports and investigative file from York City Police Department and Officer Troy Cromer

M. SETTLEMENT

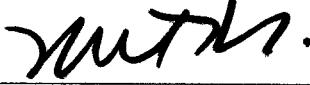
The parties engaged in good faith negotiations before Magistrate Judge Smyser without reaching settlement. A representative of Defendant's insurance carrier will be present to participate in settlement discussions.

N. **VIDEOTAPE DEPOSITIONS**

None.

Respectfully submitted,

DURKIN & ABEL, P.C.

By: 

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CERTIFICATE OF SERVICE

MARTIN A. DURKIN, JR., ESQUIRE, hereby certifies that a true and correct copy of the foregoing Pre-Trial Memorandum has been forwarded to counsel listed below by United States First-Class mail, postage pre-paid, on the 27th day of August, 2002 as follows:

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